

FAIR EMPLOYMENT AND HOUSING COMMISSION
PROPOSED REGULATIONS

California Code of Regulations, title 2, § 7288.0 Harassment Training and Education

7288.0 Harassment Training and Education

(a) Definitions. For purposes of this section:

- (1) "Contract worker" is a person performing services pursuant to a contract, as specified by Government Code section 12940, subdivision (j)(4)(A).
- (2) "Employee" includes full time, part time, temporary and contract workers. There is no requirement that the 50 employees work at the same location or all reside in California.
- (3) "Employer" means any of the following:
 - A. any person engaged in any business or enterprise in California, who employs 50 or more employees to perform services for a wage or salary or contract workers or any person acting as an agent of an employer, directly or indirectly.
 - B. the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees.
- (4) "Having 50 or more employees" means employing fifty or more employees for each working day in any twenty consecutive weeks in the current calendar year or preceding calendar year.
- (5) "Instructional Designer" under this section is the individual creating the content for a classroom training, e-training or webinar.
- (6) "Other effective interactive training and education" includes non-classroom instruction using audio, video, or computer technology, with an opportunity for feedback, the opportunity to ask questions and have them answered, and testing that measures progress and acquisition of knowledge. E-training and webinars shall incorporate feedback or a participation component at least once every 15 minutes, so that employees are measurably engaged in the training.
- (7) "Two hours" of harassment training is either, two hours of classroom or webinar training or, the amount of time that the same content may be covered in an e-learning program for an average learner. E-learning programs are not required to have a built-in timer that causes rapid learners to view additional content until the two hour standard is met.
- (8) "Supervisory employees" are supervisors defined under Government Code section 12926, subdivision (r).

- A. Supervisory employees need not be physically located in California so long as they supervise California employees.
 - B. Attending harassment training does not create an inference that an employee is a supervisor.
- (9) “New” supervisory employees are employees promoted or hired to a supervisory position after July 1, 2005.
- (10) Training can mean any of the following:
- A. “Classroom” training is in-person, instructor-led instruction, created by a qualified instructional designer and provided to a supervisor by a qualified trainer, in a setting removed from the supervisor’s usual work environment.
 - B. “E-learning” is individualized, computer-based training created by a qualified instructional designer.
 - C. “Webinar” is a web-based seminar created by a qualified instructional designer and taught by a qualified trainer.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Sections 12926(r); 12940(j)(4)(A); 12950.1, subds. (a) & (c), Government Code.

(b) Training

- (1) Frequency of Training: An employer shall provide training once every two years, and may use either of the following methods or a combination of the two methods to track compliance.
- A. “Individual” Tracking: An employer may track its training requirement for each supervisor, measured two years from the date of completion of the last training of the individual supervisor.
 - B. “Training year” tracking: An employer may designate a “training year” in which it trains its supervisors and thereafter must again retrain its supervisors by the end of the next “training year,” two years later. Thus, with this method, an employer who has trained its supervisors by December 31, 2005, must again train its supervisors by December 31, 2007.
- (2) Training at New Businesses. Businesses created after January 1, 2006, must provide training within six months of their establishment and thereafter biennially, measured either from the individual or training year tracking method.

(3) Training for New Supervisors. New supervisors shall be trained within six months of assuming their supervisory position and thereafter shall be trained once every two years, measured either from the individual or training year tracking method. To incorporate new supervisors into the employer's training year tracking schedule, a new supervisor may need to be retrained sooner than once every two years. For example, an employer has created a training year schedule designated as 2005, 2007, 2009, et cetera. A new supervisor is hired and receives harassment training in 2006. That employee would need to again be trained in 2007 along with the other supervisory employees and thereafter, follow the employer's two year training schedule.

(4) Duration of Training. The training required by this section does not need to be completed in two consecutive hours. For classroom training or webinars, the minimum duration of a training segment shall be no less than half an hour. For e-training, the minimum training segment shall be fifteen minutes.

NOTE: Authority cited: Section 12935(a), Government Code.
Reference: Section 12950.1(a), Government Code.

(c) "Trainers or educators" under this section may include California licensed attorneys, human resource professionals, psychologists or others provided they have legal education or practical experience in harassment training and knowledge of California laws prohibiting unlawful harassment. The terms "trainers or educators" also include instructional designers of training done under this section.

(1) Desirable qualities for an effective trainer or educator include a person who: can use various training methodologies; can facilitate small and large group discussions; is an effective listener; has a credible, positive professional reputation, and continues to learn about gender and cultural issues and concerns.

(2) Undesirable qualities for an effective trainer or educator include a person who is or has a reputation of being in the workplace or the instructional environment: a "hugger," sexual, flirtatious, aggressive, arrogant, abusive, demeaning to women or men, telling offensive jokes or using sexual, racial, religious, sexual orientation or other protected bases stereotypes or derogatory language.

(3) The trainer or educator shall be qualified to train about the following:

A. what is unlawful harassment;

B. how to intervene when harassing behavior occurs in the workplace;

C. how to report harassment complaints;

D. how to respond to a harassment complaint;

E. how to investigate harassment complaints and an employer's obligation to do so;

F. the illegality of retaliation for filing a harassment complaint and how to prevent retaliation from occurring when an employee has filed a harassment complaint; and

G. the employer's anti-harassment policy.

The trainer or educator may use hypotheticals or examples that illustrate the course content and involve the supervisor through questions, problem solving, or tests to insure that the information is understood.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Section 12950.1(a), Government Code.

(d) Content

The training mandated by California Government Code section 12950.1, shall include but is not limited to:

- (1) A definition of unlawful harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964. In addition to a definition of sexual harassment, an employer may provide a definition of other forms of harassment covered by the FEHA, as specified at Government Code section 12940, subdivision (j), and discuss how harassment of an employee can cover more than one basis.
- (2) FEHA and Title VII statutory provisions and case law concerning the prohibition against and the prevention of unlawful harassment in employment.
- (3) The types of conduct that constitutes harassment.
- (4) Remedies available for harassment.
- (5) Strategies to prevent harassment in the workplace.
- (6) "Practical examples," including but not limited to role plays, case studies, group discussions, and examples with which the employees will be able to identify and apply in their employment setting.
- (7) The confidentiality of the complaint process.
- (8) Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment.
- (9) Training on how to conduct an effective investigation of a harassment complaint.
- (10) Training on what to do if the supervisor is personally accused of harassment.

- (11) Training on the contents of the employer's anti-harassment policy and how to utilize it if a harassment complaint is filed.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Sections 12950; 12950.1, subds. (a) & (f), Government Code.

(e) Remedies

As part of an order in an adjudicatory proceeding pursuant to California Code of Regulations, title 2, section 7429, the Commission may issue an order finding an employer failed to comply with Government Code section 12950.1 and order such compliance within 60 days of the effective date of the Commission's order.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Section 12950.1(e), Government Code.

- (f) Compliance with section 12950.1 prior to effective date of Commission regulations.

An employer who has made a substantial, good faith effort to comply with section 12950.1 by completing training of its supervisors prior to the effective date of these regulations shall be deemed to be in compliance with section 12950.1 regarding harassment training as though it had been done under these regulations.

NOTE: Authority cited: Section 12935(a), Government Code.

Reference: Section 12950.1, Government Code.

~~7288.0~~ 7288.1 Labor Organizations. (Reserved.)

~~7288.1~~ 7288.2 Apprenticeship Programs. (Reserved.)

~~7288.2~~ 7288.3 Employment Agencies. (Reserved.)

NOTE: Authority cited: Section 12935(a), Government Code.